

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LAURIE KELLOGG,

Plaintiff,

07 CV 2804 (BSJ)(GWG)

- against -

NOTICE OF MOTION

NEW YORK STATE DEPARTMENT OF
CORRECTIONAL SERVICES, et al.,

Defendants.
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PLEASE TAKE NOTICE that upon the annexed complaint, the accompanying memorandum of law and the Declaration of Karen Bellamy and exhibit annexed thereto, defendants New York State Department of Correctional Services (“DOCS”), Commissioner Brian Fischer, Deputy Commissioner for Correctional Facilities Lucien Leclaire, Deputy Commissioner for Programs John Nuttal, Americans With Disabilities Act Coordinator Robert Raymond, Deputy Commissioner and Chief Medical Officer Lester Wright, former Superintendent Elaine Lord, Superintendent Ada Perez, former Deputy Superintendent of Security Terence McElroy, former Deputy Superintendent of Security Gwen Schneider, Medical Director Lori Goldstein, Lieutenant Robert Ball, former Lieutenant Brandon Smith (promoted to Captain and currently a Facility Operations Specialist for DOCS), Sergeant Mark Armstrong, Sergeant Gary Notaro, Correction Officer Michael Barclay, Correction Officer Barron Roger and Correction Officer Tracie Duncan, by their attorney ANDREW M. CUOMO, the Attorney General of the State of New York, will move this Court before the Honorable Barbara S. Jones, at the United States Courthouse, 500 Pearl Street, New York, New York, 10007 at a date to be determined by the Court, for an order pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, dismissing plaintiff’s complaint on the grounds that (1) plaintiff’s claims against DOCS and the individual supervisory defendants in their official capacity are barred by the Eleventh

Amendment of the United States Constitution; (2) plaintiff cannot maintain pendent state law claims against the defendants; (3) plaintiff's claims prior to April 6, 2004 are barred by the Statute of Limitations; (4) claims alleging retaliation, deprivation of property, sexual abuse, sexual harassment, cruel and unusual punishment, due process, equal protection, conspiracy and deliberate indifference to serious medical needs must be dismissed for failure to exhaust administrative remedies; (5) plaintiff does not state a due process claim with respect to her claim of deprivation of property; (6) plaintiff does not state an Equal Protection claim; (7) plaintiff's former "Tracker" designation did not implicate a constitutional violation; (8) plaintiff has failed to state a claim for conspiracy; (9) plaintiff has failed to allege the personal involvement or state a claim against several defendants; (10) plaintiff fails to state a deliberate indifference to serious medical needs claim against defendant Goldstein and for such further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE, that based on the briefing schedule being proposed to the Court, opposition papers must be served on defendants by October 10, 2007. Defendants will serve any reply papers by November 9, 2007.

PLEASE TAKE FURTHER NOTICE, that failure to oppose defendants' motion may result in the dismissal of the complaint.

Dated: New York, New York
August 10, 2007

ANDREW M. CUOMO
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State of New York
Attorney for Defendants

By:

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